

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

MOLDEX-METRIC, INC.,

Plaintiff,

vs.

3M COMPANY and 3M INNOVATIVE PROPERTIES COMPANY,

Defendants.

Civil No. 14-1821 (JNE/FLN)

**DECLARATION OF
MATTHEW HOSEN IN
SUPPORT OF MOLDEX'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT ON
ELEMENTS OF ITS SHAM
LITIGATION AND MALICIOUS
PROSECUTION CLAIMS**

I, MATTHEW HOSEN, hereby declare and state as follows:

1. I am an attorney with the law firm of Quinn Emanuel Urquhart & Sullivan, LLP, admitted *Pro Hac Vice*, representing Plaintiff Moldex-Metric, Inc. ("Moldex") in this action.
2. This Declaration is submitted, under penalty of perjury, in connection with Moldex's Motion for partial summary judgment on elements of its sham litigation and malicious prosecution claims. In accordance with 28 U.S.C. Sec. 1746, I intend this Declaration to have the same binding legal effect as an affidavit signed by me. The materials that are either referenced in or attached to this Declaration relate to Moldex's requests for summary judgment on the objective baselessness and probable cause elements of Moldex's sham litigation and malicious prosecution claims, respectively.

3. Attached hereto as Exhibit 1 is a true and correct copy of relevant pages from the transcript of Kenneth Cunefare's February 26, 2016 deposition testimony in this action. (FILED UNDER SEAL)

4. Attached hereto as Exhibit 2 is a true and correct copy of relevant pages from the transcript of Eric Levinson's September 30, 2015 deposition testimony in this action. (FILED UNDER SEAL)

5. Attached hereto as Exhibit 3 is a true and correct copy of 3M's Memorandum in Support of Plaintiffs' Motion to Dismiss Count II of the Complaint [With Prejudice], Counterclaims II and IV and Fifth Affirmative Defense [Without Prejudice], filed by 3M on March 29, 2013 in 3M's prior patent lawsuit against Moldex (12-cv-00611) ("3M's Patent Lawsuit").

6. Attached hereto as Exhibit 4 is a true and correct copy of the Scheduling Order (ECF No. 18) issued in 3M's Patent Lawsuit.

7. Attached hereto as Exhibit 5 is a true and correct copy of 3M's Amended Claim Charts comparing Moldex's BattlePlug to claims 1, 3, and 17 of the United States Patent No. 6,070,693, served by 3M on Moldex on August 24, 2012.

8. Attached hereto as Exhibit 6 is a true and correct copy of 3M's Opposition to Moldex's Motion for Summary Judgment of Non-Infringement of U.S. Pat. No. 6,070,693 (ECF No. 46 in 3M's Patent Lawsuit).

9. Attached hereto as Exhibit 7 is a true and correct copy of the Court's Order Dismissing 3M's '693 and '157 claims with prejudice in 3M's Patent Lawsuit. (ECF No. 92 in 3M's Patent Lawsuit).

10. Attached hereto as Exhibit 5014 is a true and correct copy of what has been marked as Deposition Exhibit 5014, is United States Patent No. 6,070,693.

11. Attached as Exhibit 5102 is a true and correct copy of 3M's Complaint in 3M's Patent Lawsuit, dated March 8, 2012.

12. Attached hereto as Exhibit 5107 is a true and correct copy of what has been marked as Deposition Exhibit 5107, and is a publication entitled "Empirical evaluation using impulse noise of the level-dependency of various passive earplug designs," authored by Elliot Berger and Pascal Hamery (one of the named inventors on the asserted patent in this action).

13. Attached hereto as Exhibit 5122 is a true and correct copy of what has been marked as Deposition Exhibit 5122, and is a March 12, 2013 letter from 3M's counsel to Moldex's counsel attaching a covenant not to sue on the '693 patent.

14. Attached hereto as Exhibit 5124 is a true and correct copy of what has been marked as Deposition Exhibit 5124, and is a May 9, 2013 letter from 3M's counsel to Moldex's counsel attaching a covenant not to sue on the '157 patent.

15. Attached as Exhibit 6100 is a true and correct copy of what has been marked as Deposition Exhibit 6100, and is the file history for U.S. Patent No. 5,936,208.

16. Attached as Exhibit 6103 is a true and correct copy of what has been marked as Deposition Exhibit 6103, and is the file history for U.S. Patent No. 6,070,693.

17. Attached as Exhibit 6108 is a true and correct copy of what has been marked as Deposition Exhibit 6108, and is French Patent Publication No. 2 676 642 ("FR '642")) for an "Improved Hearing Protection Device."

I DECLARE, UNDER PENALTY OF PERJURY, THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT.

Executed on: April 1, 2016

s/ Matthew Hosen

Matthew Hosen